

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

INDECK KEYSTONE ENERGY LLC,	:
	:
Plaintiff,	:
	:
v.	:
	Civil Action No. 04-325 Erie
	:
VICTORY ENERGY OPERATIONS	:
LLC,	Judge Sean J. McLaughlin
	:
Defendant	:
	:
	JURY TRIAL DEMANDED

**DEFENDANT'S MOTION IN LIMINE NO. 8 TO BAR
EXPERTS AND OPINIONS NOT DISCLOSED PURSUANT TO RULE 26(a)(2)**

Defendant Victory Energy Operations LLC (“VEO”), by its undersigned counsel, for its Motion *In Limine* To Bar experts and opinions not disclosed pursuant to Federal Rule of Civil Procedure 26(a)(2), states as follows:

1. On its Witness List, Plaintiff Indeck Keystone Energy, LLC (hereinafter “IKE”) listed Robert V. Siebel (hereinafter “Seibel”) as an expert that will testify at trial.
2. In the course of pre-trial discovery, IKE has disclosed Seibel’s opinions regarding the existence of trade secrets via Seibel’s Expert Report, Supplemental Report, and deposition testimony.
3. The Federal Rules of Civil Procedure do not allow expert witnesses to testify to previously undisclosed opinions. Quite the contrary, Rule 26(a)(2)(B) provides in pertinent part:

“...with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the

witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefore..."

4. As IKE's trade secrets expert, Seibel's testimony at trial is "limited to those opinions of which he gave defendants notice prior to trial." *Ebeling & Reuss, LTD. v. D. Swarovski & Co.*, 1992 U.S. Dist. LEXIS 12731 at *61 (E.D. Penn. 1992). Limiting Seibel's testimony to the trade secrets he identified in his Expert Report, Supplemental Report, and deposition will ensure that each side has notice and an opportunity to respond to the testimony of the other's experts. *See Id.*

5. In accordance with the Federal Rules, IKE should be barred from presenting any testimony of Seibel that is not already expressed in his Expert Report, Supplemental Report, and Deposition.

WHEREFORE, Defendant Victory Energy Operations LLC respectfully requests that the Court enter an order barring experts and opinions not disclosed pursuant to Rule 26(a)(2).

Dated: April 27, 2007

Respectfully submitted,

/s/ Christopher T. Sheean
One of the Attorneys for Defendant,
VICTORY ENERGY OPERATIONS
LLC

Christopher T. Sheean
Brian W. Lewis
Matthew Garrett
Wildman, Harrold, Allen & Dixon LLP
225 W. Wacker Drive, 28th Floor
Chicago, IL 60606
(312) 201-2997

LOCAL COUNSEL:

G. Jay Habas
Marshall, Dennehey, Warner
Coleman & Goggin
1001 State Street, Suite 1400
Erie, PA 16506
(814) 461-7800
PA ID No. 55581

Counsel for Victory Energy Operations LLC

MOTION IN LIMINE CERTIFICATE

Christopher T. Sheean, an attorney, certifies pursuant to Local Rule 16.1.4(D), that all parties made a reasonable effort to reach agreement on the issues raised by this motion prior to its filing.

/s/ Christopher T. Sheean _____

CERTIFICATE OF SERVICE

Christopher T. Sheean, an attorney, certifies that on the 27th day of April, 2007, he caused a copy of the foregoing ***Motion In Limine To Bar experts and opinions not disclosed pursuant to Federal Rule of Civil Procedure 26(a)(2)*** to be filed electronically, and that the CM/ECF system for the court will e-mail a copy of the foregoing to the following counsel of record:

John K. Gisleson
Robert J. Williams
Schnader Harrison Segal & Lewis LLP
Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222-3001
Email: JGisleson@Schnader.com
ATTORNEYS FOR PLAINTIFF INDECK
KEYSTONE ENERGY LLC

/s/ Christopher T. Sheean
Christopher T. Sheean